



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 15, 1994

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Legal Affairs Division  
Texas Department of Criminal Justice  
P.O. Box 99  
Huntsville, Texas 77342-0099

OR94-350

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24497.

The Texas Department of Criminal Justice (the "department") has received a request for specific information concerning the requestor. You have agreed to provide most of the information to the requestor. The information at issue, which you have submitted for our review, is a police report from the City of Waco Police Department.<sup>1</sup> You contend that sections 552.101 and 552.108 (former sections 3(a)(1) and 3(a)(8) of the act) except portions of the police report from disclosure. We address your arguments in turn.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under section 552.101, information may be withheld on the basis of common-law privacy if it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and there is no legitimate public interest in its disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision Nos. 562 at 9, 561 at 5, 554

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<sup>1</sup>We note that although you have produced most of the information to the requestor, you have withheld a pre-sentence investigation ("PSI") because "controlling law . . . leaves dissemination of PSIs in the hands of the sentencing court." You have not requested a ruling on this document; we therefore do not address the availability of the PSI under the Open Records Act.

at 3 (1990). The detailed description and identity of a victim of sexual assault is ordinarily protected by common-law privacy. Open Records Decision No. 339 (1982). Although the requestor is aware of the identity of the victim, the statements in the police report about the sexual offense and the identity of the victim are protected from disclosure by common-law privacy. We have marked those portions of the police report that you must withhold to protect the victim's common-law privacy interests.<sup>2</sup>

You also contend that section 552.108 excepts the entire police report from disclosure. Section 552.108 provides that:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].


Traditionally, when applying section 552.108, this office has distinguished between cases that are still under active investigation and those that are closed. In cases that are still under active investigation, this section exempts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-446 (1982); Open Records Decision No. 434 (1986). You claim that the Waco Police Department should determine whether the remaining information on the police report should be withheld. Although the interests of another law enforcement agency may be sufficient to withhold information under section 552.108, neither the department nor the Waco Police Department have explained to this office how release of the remaining information on the report would unduly interfere with law enforcement. *See* Open Records Decision No. 586 (1991). Therefore, you may not withhold the remainder of the police report under section 552.108. Unless you provide us with compelling reasons for not disclosing the remaining information we assume that, except as noted above, it will be made available to the requestor. *See id.* (concluding that, in some circumstances, a law enforcement interest may be a compelling reason for nondisclosure.)

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<sup>2</sup>*But see Star Telegram v. Walker*, 834 S.W.2d 54 (1992) (court cannot prevent a newspaper from publishing a rape victim's identity when lawfully obtained from the public record). In this case, we have no information to indicate that the victim's identity and statement has been previously released in a public court record. To the extent that such information is included in public court records, the department may not now withhold it from public disclosure on the basis of common-law privacy.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Loretta R. DeHay". The signature is fluid and cursive, with the first name "Loretta" being more prominent and the last name "DeHay" following in a similar style.

Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/rho

Ref.: ID# 24497

Enclosures: Marked documents

cc: Mr. Billy Burney  
TDCJ# 644508  
Retrieve Unit  
Rt. 5, Box 1500  
Angleton, Texas 77515  
(w/o enclosures)